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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,467

09/10/2004

Jan Van Der Linden

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GREER, BURNS & CRAIN
300 S WACKER DR
25TH FLOOR
CHICAGO, IL 60606

EXAMINER

STIGELL, THEODORE J

ART UNIT

PAPER NUMBER

3763

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DELIVERY MODE

05/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/507,467	Applicant(s) VAN DER LINDEN ET AL.	
	Examiner THEODORE J. STIGELL	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-11,13,15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11,13,15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-7, 13, 15, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Flower (3,520,300). Flower discloses a device that could supply gas to an area comprising a supply conduit (40), which is connectable to a gas source (54) and which includes an outlet end (34), a porous body (32) made of a polyurethane foam rubber-like material (column 2, lines 20-25) provided at the outlet end, wherein the device is arranged to permit the supply of gas through the porous body, a filter (50) arranged on the supply conduit for filtering the supply of gas through the supply conduit, and an attachment member (22) including a first and second surface (28 and the outside surface of 22 respectively) and a sleeve (24) extending outwardly away from the porous body and being connected to the outlet end, and a continuous channel extending through the sleeve and first and second surfaces, wherein the porous body is attached to the first surface and wherein the outlet end is connected to the attachment member for transmitting the supply in a direction through the outlet end, the channel, and the porous body, wherein the first surface covers substantially the porous body as seen in the first direction, wherein the sleeve extends in a direction between 0-90

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degrees, wherein the sleeve projects into the supply conduit (Figure 4), wherein the member and body are substantially circular in the first direction, wherein the porous body can be semispherical (Figure 6), wherein the device includes a homogenous body, wherein the gas can carbon dioxide, and wherein the porous body is arranged to supply gas in a controlled flow and the device can be used to supply gas to a human or animal.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 4-6, 13, 15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaton et al. (WO 99/13793) in view of Flower (3,520,300). Heaton discloses a device that could supply gas to an area comprising a supply conduit (catheter not shown, page 7, line 22), which is connectable to a gas source (not shown) and which includes an outlet end, a porous body (73) made of a polyurethane foam rubber-like material provided at the outlet end, wherein the device is arranged to permit

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supply of gas through the porous body, the device includes an attachment member (30), which includes first and second surfaces (top and bottom surfaces of 30) and a channel extending therethrough and a sleeve (35,36) surrounding the conduit and projecting from the second surface, wherein the porous body is attached to the first surface by way of projections (32) and wherein the outlet end is connected to the attachment member for permitting the supply via the channel, wherein the porous body is about twice as thick as the attachment member (30), wherein the surface of the attachment member covers substantially the porous body as seen in the first direction, wherein the member and body are substantially circular seen in the first direction, wherein the device includes a homogenous body, wherein the gas can be carbon dioxide, and wherein the porous body is arranged to supply gas in a controlled flow and the device can be used to supply gas to a human or animal.

Heaton, therefore, discloses a device that includes most of the limitations recited in the claims listed above. Heaton does not teach to include a filter on the supply conduit. Flower discloses a suction device with a filter (50) positioned on the supply conduit for filtering liquid from the suctioned gas. The filter allows for the removal of excess, unwanted body fluids.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Heaton with the filter of Flower to provide a device that could filter off excess fluid from a wound area.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flower (3,520,300) in view of Heimlich (3,672,372). Flower discloses all of the

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limitations as recited in claim 1, but does not teach to include a stiffening means in the form of a deformable wire in the conduit. Heimlich discloses a catheter that includes tubing (10) with wire stiffening means (36) disposed within the conduit. Heimlich teaches that the stiffening means is useful in avoiding kinking in the flexible catheter that would inhibit the flow of fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supply conduits of Flower with the limitations of Heimlich to make a supply conduit that was more resilient and less likely to kink while delivering gas to or suctioning gas from the body.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaton (WO 99/13793) in view of Flower (3,520,300) and further in view of Heimlich (3,672,372). Heaton and Flower disclose all of the limitations as recited in claim 1, but do not teach to include a stiffening means in the form of a deformable wire in the conduit. Heimlich discloses a catheter that includes tubing (10) with wire stiffening means (36) disposed within the conduit. Heimlich teaches that the stiffening means is useful in avoiding kinking in the flexible catheter that would inhibit the flow of fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supply conduits of Heaton and Flowers with the limitations of Heimlich to make a supply conduit that was more resilient and less likely to kink while delivering gas to or suctioning gas from the body.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flower (3,520,300) in view of Wood (GB 2,220,357). Flower discloses all of the limitations of the independent claim but fails to disclose a filter configured to purify gas from particles

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and microorganisms. Wood discloses a suction system with a similar filter to Flower but further teaches including filter member to separate particles and bacteria. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Flower with filter member of Wood because it is known in the art of wound suction that filter members are useful in preventing the passage of bacteria and particles.

Response to Arguments

Applicant's arguments filed 12/7/2007 have been fully considered but they are not persuasive.

Flower 3,520,300

In response to the applicant's argument that Flower does not disclose a supply tube, the examiner respectfully disagrees. There is no structural difference between a supply tube and a "discharge tube". Both tubes are basically cylindrical elements that are capable of supplying or suctioning.

In response to the applicant's argument that Flower does not disclose a supply of gas to a surgical field, the examiner respectfully disagrees. The examiner maintains that suction pumps are capable in a reverse mode of delivering air rather than suctioning it off, just as any standard vacuum. Furthermore, this point is irrelevant because the claims do not require a "gas source". The claims only require that the conduit is connectable (has the ability to connect) to a gas source. The examiner, therefore, maintains that the applicant is arguing elements that are not even required by the claim.

In response to the applicant's argument that Flower does not disclose a filter, the examiner respectfully disagrees. The applicant has not specially defined "filter" in the specification and therefore the examiner has to give the broadest reasonable definition to the term. The examiner maintains that a filter is anything that separates elements that pass therethrough. Element (50) of Flower separates liquid from the gas flow and can be considered a filter. Furthermore, the new reference Wood (GB 2,220,357) shows that it is not a novel concept to include a filter member in an element similar to the filter of Flower.

In response to the applicant's argument that Flower does not disclose a continuous channel extending through the sleeve and the first and second surfaces, the examiner respectfully disagrees. The channel is just the lumen defined by these elements. It is clear from Figure 2 that a continuous channel extends from the element (24) through head member (22) and through element (28).

Heaton et al. (WO 99/13793) in view of Flower (3,520,300)

The examiner has included the corresponding elements to the claimed limitations in this action. The examiner notes that these elements were described in the non-final office action mailed on 4/17/2007 and therefore it is clear from the prosecution history what elements of Heaton correspond to the recited limitations. The examiner has included the explanation again to avoid any confusion. The applicant seems to argue that Heaton also does not disclose a gas supply, but the examiner maintains that no "gas supply" is claimed by the applicant. In regards to the channel, it is clear from the

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drawings and specification that there is a continuous channel (lumen) through elements (36), (35), and (30).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Flowers and Heaton are directed to devices for suctioning wounds and therefore the examiner maintains that one of ordinary skill in the art would recognize the benefits of combining elements to make a better device. The applicant seems to be confused as to what is actually claimed. The claims recite a "device" for the supply of a gas to an area which corresponds to a "device" that is capable of supplying gas to an area. Both Flower and Heaton are devices that are capable of supplying gas to an area. The examiner is not suggesting that Heaton or Flower were concerned with making a device for the supply of gas. The examiner is only suggesting that it would be obvious to combine elements from the two devices to make an apparatus that could supply gas to an area. The applicant further argues that there is no need to seek a filter for a suction device that removes waste products. The examiner strongly disagrees with this statement since that is in fact what Flower did. The new art Wood GB (2,220,357) further shows this statement to be erroneous.

In response to the applicant's argument that the combination has no chance of success, the examiner respectfully disagrees. The applicant argues that the reference does not show gas delivery, a gas source, a gas supply, or filtration of the gas. The examiner notes that the first three limitations are not even requirements of the claim. The examiner maintains that Flower is capable of filtration in the broadest reasonable interpretation of the term.

Flower (3,520,300) and Heaton et al. (WO 99/13793) in view of Heimlich (3,672,372)

The examiner did not combine Heimlich with the references to show gas delivery or a gas source, but instead to show a stiffening means. The applicant has provided no arguments regarding this combination.

In summary, the examiner combined the references to make a device that includes all of the structural limitations and is capable of delivering gas which is all the claims require.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THEODORE J. STIGELL whose telephone number is (571)272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Theodore J Stigell/
Examiner, Art Unit 3763

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/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763